

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL FETTERHOFF,

Case No. 07-15027

Plaintiff,

David M. Lawson

vs.

United States District Judge

KERNEY, HUTCHINSON,
FEHENIA, and CORRECTIONAL
MEDICAL SERVICE, INC.,

Michael Hluchaniuk
United States Magistrate Judge

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR
APPOINTMENT OF COUNSEL WITHOUT PREJUDICE (Dkt. 43)**

This matter is before the Court on plaintiff's motion for appointment of counsel. (Dkt. 43). Plaintiff, an inmate currently at the Pine River Correctional Facility, brings this action under 42 U.S.C. § 1983, claiming a violations of his rights under the United States Constitution. (Dkt. 1). Plaintiff alleges that claims that defendants, Correctional Medical Services, Inc. (CMS) and three of its employees, were deliberately indifferent to his serious medical need. *Id.* District Judge David M. Lawson referred this matter for all pretrial purposes to Magistrate Judge R. Steven Whalen on December 6, 2007. (Dkt. 7). This matter was reassigned to the undersigned on January 14, 2008. (Dkt. 11). Plaintiff filed a

motion for the appointment of counsel on February 13, 2009. (Dkt. 43). In support of his request for counsel, plaintiff states that he is unable to afford counsel, the issues in the case are complex, he will need counsel to conduct discovery, and he has limited access to resources to prepare for the jury trial he has requested. (Dkt. 43).

Under 28 U.S.C. § 1915(e)(1), a federal court may request an attorney to represent an indigent plaintiff. *Reneer v. Sewell*, 975 F.2d 261 (6th Cir. 1992). Except in rare circumstances, it is the practice of this Court to consider the appointment of counsel in prisoner civil rights cases only where exceptional circumstances exist, or in certain cases only after a motion to dismiss or for summary judgment has been decided. In order to make the determination whether there are exceptional circumstances to appoint counsel, the Court considers the type of case involved, plaintiff's ability to represent himself, as well as the complexity of the case, and also whether the claims being presented are frivolous or have a small likelihood of success. *Reneer*, 975 F.2d at 261; *see also Mars v. Hanberry*, 752 F.2d 254, 256 (6th Cir. 1995).

It appears that, from reading the complaint and other papers he has submitted, plaintiff has an adequate understanding of the issues and matters involved in this case, and is able to articulate the claims and arguments in a

reasonable fashion. It also appears that the issues raised in his complaint are straightforward and understandable and not of an unduly complex nature. Should dispositive motion(s) be decided in plaintiff's favor, plaintiff may re-file the motion for the appointment of counsel.

Based on the foregoing, plaintiff's motion for appointment of counsel is
DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not assign as error any defect in this Order to which timely objection was not made. Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), objections must be served on this Magistrate Judge.

Date: February 13, 2009

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on February 13, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Ronald W. Chapman and Brian J. Richtarcik, and I certify that I have mailed by United States Postal Service the foregoing pleading to the plaintiff, a non-ECF participant, at the following address: Michael Fetterhoff, # 238227, Pine River Correctional Facility, 320 N. Hubbard, St. Louis, MI 48880.

s/James P. Peltier
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